IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1561 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
UMESHBHAI RAMSURAT PANDE

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Appearance :
MR IM PANDYA APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/10/2007

ORAL JUDGMENT : (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge, Fast Track Court No. 10, Rajkot, on 15th of April, 2005, in Sessions Case No. 96 of 2004, whereby the Trial Court acquitted present respondent, being accused of the Sessions Case, punishable under Sections 498-A, 504, 306 and 304-B of the Indian Penal Code.

2 Prosecution case briefly stated that deceased Rina had married to present respondent before 3 to 4 years of the incident. The complaint came to be filed by brother of deceased Vijaypal Ayodhyaprasad Tiwari, PW-2, before Police Commissioner, Eastern Division, Rajkot City, on 21st of August, 2003, stating that though Rina was married to Respondent, she frequently visited their house at UP and used to stay for 10 to 15 days. Respondent was working at Rajkot and, therefore, both husband and wife were staying at Rajkot. On 16th of August, 2003, younger brother of respondent came to them and informed that Rina had got burn injuries and was admitted in the hospital at Rajkot. On 18th of August, 2003, respondent informed them that Rina had died. Therefore, complainant and other relatives of deceased came to Rajkot and inquired about the death of Rina. It is the case of the prosecution

that at the time of marriage of Rina, it was decided to give Rs. 15,000/- towards dowry, but on account of financial condition of father of Rina, Rs.10,000/- were paid to respondent and remaining amount of Rs. 5,000/- was kept to be paid afterwards. On account of this, behaviour of the respondent was not proper towards Rina or towards the relatives of deceased Rina. According to complainant, whenever they attempted to talk to Rina on phone, they were not allowed by the respondent to the extent that respondent prohibited relationship of Rina with them. When both of them resumed stay at Rajkot, Rina had conveyed that remaining amount of Rs. 5,000/- of dowry to be paid to the respondent must be paid immediately. She also stated that otherwise it would be difficult for her to live with her in-laws. It is the allegation that, on account of this, cruelty was executed upon Rina and, therefore, Rina committed suicide on account of behaviour of the respondent. Crime came to be registered upon the above said complaint and a charge sheet came to be filed against the respondent for above said offences which was registered as Criminal Case No. 9795 of 2003. The said case was committed to the Court of Sessions and was made over to the learned Additional Sessions Judge and 10th Fast Track Court, Rajkot, which was registered as Sessions Case No. 96 of 2004. Additional Sessions Judge framed charge against the respondent on 8th of October, 2004, vide Exhibit – 5, to which the respondent pleaded not guilty and he was, therefore, put to trial. Prosecution examined as many as 13 witnesses to prove its

case and produced on record voluminous documentary evidence. After the evidence of the prosecution was over, incriminating circumstances appearing in evidence were put to the respondent and his statement was recorded by the Trial Court under Section 313 of the Code of Criminal Procedure. Thereafter, learned Trial Judge heard prosecution as well as defence and came to the above conclusion and, hence, this Appeal.

3 Learned APP Mr. I.M. Pandya for the State was heard at length at this stage. We have called for Record and Proceedings from the Trial Court and have gone through carefully the evidence recorded during the trial and the appreciation of the evidence undertaken by the Trial Court. We have at this stage considered vital features of the matter and the reasonable probability arising out of the circumstances of the case. We have undertaken thorough scrutiny of the reasons assigned by the Trial Court for acquitting the accused.

4 It appears that PW-2 Vijaypal Ayodhyaprasad Tiwari, complainant, examined at Exhibit–31, stated the facts of the complaint and particularly the fact that remaining amount of Rs.5,000/- decided at the time of dowry was to be paid to the respondent and on that count cruelty was executed upon his sister, she committed suicide. He has been cross-examined in detail by the defence, particularly, he admitted in clear terms that before

offering his complaint to the police, he has gone through the dying declaration of deceased Rina, recorded by the Executive Magistrate and her statement. Both statements were explained to him in Hindi. It was also informed him that, how, according to police papers, Rina had got burn injuries. PW-3 Shivkumar Rambaran Mishra is husband of Mayaben, other elder sister of the complainant. According to him, he was informed on 18th of August, 2003 that Rina had died on account of burn injuries and the incident had occurred on account of payment of remaining amount of dowry. He has been cross-examined by the defence. PW-4 Shital Prasad Ramjast Tiwari, uncle of complainant and deceased, is examined at Exhibit– 34. According to him also, he was informed on 18th of August, 2003 by the younger brother of the respondent that Rina had got burn injuries and had died, but he also stated that the incident occurred on account of non-payment of remaining amount of dowry. PW-5 Janardanbhai Sukhdevbhai, examined at Exhibit–31, is panch of panchnama at Exhibit-11. He has not supported the prosecution case. PW-6 Parmar Govindbhai Devjibhai, examined at Exhibit–36 is second panch of the said panchnama, but he has also not supported the prosecution case. PW-7 Sanghani Mukundrai Kripashankar, examined at Exhibit–37, stated that at the relevant juncture, he was serving as Deputy Mamlatdar at Rajkot and received information from `B' Division Police Station, Rajkot, to draw inquest panchnama in respect of accidental death registered at Rajkot Police Station

vide A.D. Enquiry No. 117 of 2003. It was informed to him that Rinaben got burn injuries on 16th of August, 2003 at her house and he draw inquest panchnama. PW-8 Gadhvi Pravinadan Ramdan, examined at Exhibit–38, was serving as PSI in Investigation Branch of `B' Division Police Station, Rajkot. On 17th of August, 2003, at 18.15 hours, PSO `B' Division entrusted him inquiry of accidental death registered at the Police Station as AD Register No. 117 of 2003 under Section 174 of the Code of Criminal Procedure. He called the Executive Magistrate and inquest formalities were performed. PW-9 Solanki Dolatsinh Balvantsinh, examined at Exhibit- 39, was Police Constable at the relevant juncture in `B' Division Police Station and was working as PSO on 21st of August, 2003. He recorded the complaint of complainant as forwarded to him by Police Commissioner, Eastern Division, Rajkot, which he registered as Crime Register No. 553 of 2003 against the respondent. In his cross-examination, he admitted that, in respect of the very death, one AD was registered in the police station and inquiry was thereafter done by PSI Dave. PW-10 Makwana Kesabhai Devsibhai, examined at Exhibit-42, is also Police Head Constable. On 16th of August, 2003 he was serving in `B' Division Police Station and was In-charge PSO, he was informed by Hospital Duty Head Constable Chaturbhai Dhanjibhai that Rina was brought to the hospital at 13.00 hours as she caught flames from primus and was burnt. According to this witness, this entry was made in the Register and

Inquiry was entrusted to PSI Dave. He produced on record said Entry at Exhibit – 43, which denotes that Rina had got burn injuries on account of accident while she was cooking on primus at her resident. PW-11 Babubhai Burabhai, examined at Exhibit – 44, was also Head Constable at the relevant juncture in `B' Division Police Station, Rajkot and PSO on 17th of August, 2003. According to him, in pursuance of earlier entry, Exhibit – 43, Police Station was informed by Dr. A.D. Dange that Rina had died. On 17th of August, 2003, he made necessary entries in the record of Police Station and extract is placed in this respect on record at Exhibit–45. PW-12 Damor Motibhai Vichhiyabhai, examined at Exhibit–46, was concerned Dy. S.P., before whom on 21st of August, 2003, complainant Vijaypal Tiwari offered his complaint, which was recorded by him. He forwarded that complaint to `B' Division Police Station for registering the crime. In his cross-examination, he admitted that, for the said death, an accidental death inquiry was made and the statements recorded in the inquiry were brought to his notice. In the said inquiry, a dying declaration of the deceased was also recorded. In the said inquiry, Rinaben stated in clear terms that, while cooking on primus, she caught flames and got burn injuries. She also stated that there was no cruelty or bad behaviour on the part of the respondent. PW-13 Diveyeshbhai Vinodrai Dave, examined at Exhibit–47, was PSI, who conducted inquiry in accidental death, and according to him, this inquiry was entrusted to him on 16th of August, 2003 and he had recorded

statement of deceased Rinaben. He recorded the statements of other witnesses and arranged to record the dying declaration of the deceased. In his cross-examination, he submitted that when he recorded the statement of deceased, on 16th of August, 2003, in hospital, in pursuance of accidental death inquiry, the deceased stated before him that while she was cooking on primus and tried to apply pin, the primus was burst and she got burns on face and on her hairs. At that time, she was fully conscious. She also stated before this witness that there was no cruelty or any ill-treatment from her husband and the incident was pure accidental. There was no quarrel between the respondent and his wife and they were staying separately from their parents. In the said statement, he had obtained a thumb impression of the deceased. Thereafter, dying declaration was also recorded. He also stated that he also recorded the statements of neighbours and according to his conclusion, the incident was occurred on account of accident because of burner of the primus came out. PW-1 Prabhunarayan Jagdu Yadav is the landlord of the deceased and her husband. He stated that Rinaben and her husband were was staying in a room of the house belonged to this witness. According to him, on 16th of August, 2003, while he was at his house, he heard shouts and that he went in the room of the deceased and found that Rina was burnt. He tried to extinguish the fire by pouring water. People gathered there. When he inquired from the deceased, the deceased conveyed that while she was cooking on primus, she tried to apply

pin and because of that kerosene came out and she caught flames. He had taken the deceased to the hospital in a rickshaw.

5 This is all is the evidence of the prosecution.

6 Now going through the evidence carefully, we found two views from the prosecution evidence. First, view of the prosecution is disclosed from the evidence of the complainant and his relative i.e. brother-in-law. The fact which is sought to be established is, at the time of marriage of Rina, the dowry amount was decided at Rs. 15,000/-, but on account of poor financial condition of father of Rina, Rs. 10,000/- were paid and the remaining Rs. 5,000/- were kept back to be paid. However, according to these prosecution witnesses, this fact resulted in ill-treatment towards Rina by her husband – respondent herein. This fact, according to Vijaypal Tiwari, was disclosed by Rinaben to the complainant Vijaypal when Rina and the respondent shifted to Rajkot from the village of respondent. This evidence of the prosecution is required to be assessed in view of the dying declaration recorded as evidence and statement which deceased gave before PW-13 Diveyeshkumar Vinodrai Dave, who conducted inquiry in accidental death. On record, dying declaration, as recorded by Executive Magistrate, is placed at Exhibit–20. However, though the Executive Magistrate has not been examined, but dying declaration has been exhibited and appears to have been

admitted by the defence side. In the said dying declaration, which is recorded at 3.00 p.m. on the day of the incident, Rinaben in categoric terms stated before the Executive Magistrate that while she was cooking on primus and tried to apply pin, the primus was burst and she caught flames. According to her, that was the reason for the incident and burn injuries she got. She was brought to the hospital by other persons. She has not alleged anything in the said dying declaration against her in-laws or the respondent herein. There is an endorsement on the said dying declaration by concerned Doctor patient was conscious when her dying declaration was recorded. At Exhibit–21, a special report is placed on record which was sent by PSI, Rajkot `B' Division City Police Station in AD Inquiry. In Column-11 of the said report also it has been specifically mentioned that while deceased was cooking food on primus, she caught flames accidentally and was shifted to the hospital. In fact, this report is the conclusion of accidental death inquiry conducted by PSI, Dave of Rajkot `B' Division Police Station. At Exhibit–22, an entry is produced by which Head Constable of Hospital Duty informed Rajkot `B' Division Police Station that Rina had received accidental burn injuries while she was cooking on primus at her residence. This Entry is registered at Sl. No. 21 of the Register of Rajkot `B' Division Police Station. Upon that, entry was made in station diary at Sl. No. 20, which is produced at Exhibit – 23.

7 Now going through this two sets of evidence, it clearly appears that the evidence of witnesses i.e. brother of the deceased and her other relatives in respect of demand of the remaining amount of dowry and about ill-treatment by respondent to the deceased cannot be believed. PW-12 Damor Motibhai Vichhiyabhai has categorically stated that he himself recorded the statement of Rina in AD Inquiry and found that the incident was the result of pure accidental. In support of dying declaration, Exhibit- 20 is produced, wherein also, the fact discloses that the incident was the result of pure accident. Therefore, consistent circumstances right from the incident till the complaint came to be lodged by Vijaypal Tiwari, on 21st of August, clearly indicate that the incident was of accident, and that the theory of suicide committed by Rinaben, as has been advanced by the prosecution witnesses, is an after thought. There is no reason to disbelieve voluminous evidence suggesting the circumstance that incident was of accidental death and the persons involved in this process were the persons like Executive Magistrate, police personnel of Rajkot `B' Division Police Station, Doctors of Hospital and, therefore, there is no reason to disbelieve this weighty evidence as against the say of the relative witnesses of the deceased. Therefore, in our humble view, there are two sets of evidence, one favouring to the accused and other given against the accused respondent. The established law is that, in those circumstances, the set of circumstances and the evidence favouring to the accused should be adopted. The

Trial Court did the same exercise and for the above reasons acquitted the accused.

8 This being an appeal against the acquittal, unless it is found that the conclusions arrived at the trial are perverse, manifestly erroneous, palpably wrong or demonstrably unsustainable, no interference is permitted in the judgment and order of acquittal. While going through the appreciation of evidence undertaken by the Trial Court and conclusions arrived at threadbare, we have no hesitation to come to the conclusion even at this juncture that the judgment and order impugned in this Appeal is not exceptionable and requires no interference. Hence the following order :

"Leave to Appeal refused. Appeal stands dismissed."

(J. R. VORA, J.)

(M. R. SHAH, J.)

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